

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 672 of 1994

with

CRIMINAL APPEAL No 699 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

AND

MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

GANGDAS DEVJI BAROT

Versus

STATE OF GUJ

Appearance:

1. Criminal Appeal No. 672 of 1994
MR.Y.S.LAKHANI WITH MS BANNA S DUTTA for the appellants

MR.S.A.PANDYA,APP for the Respondent.

2. Criminal Appeal No 699 of 1994
MR YS LAKHANI for the appellants .
MR.S.A.PANDYA,APP for the Respondent.
-

CORAM : MR.JUSTICE K.J.VAIDYA and

Date of decision: 07/10/96

ORAL JUDGEMENT

PER:K.R.VYAS,J

Original accused Nos.1 and 2, the husband and father-in-law, respectively, of deceased Vina, have filed Criminal Appeal No. 672/94 and original accused No.3, the mother-in-law of deceased Vina has filed Criminal Appeal No. 699/94 challenging the judgment and order dated 27-4-94 of conviction and sentence passed by the learned Additional Sessions Judge, Kutchh at Bhuj in Sessions Case No. 65 of 1992 whereby the learned Additional Sessions Judge, at the end of the trial, convicted them for offences punishable under sections 304-B, 306, 498-A and 506(2) read with section 114 of the Indian Penal Code and sections 4 and 5 of the Dowry Prohibition Act, 1961 and sentenced each of the accused to suffer :

- (i) R.I. for 10 years and to pay a fine of Rs.250/-, in default to undergo further R.I. for one month for offence punishable under section 304-B;
- (ii) R.I. for seven years and to pay a fine of Rs.250/-, in default to undergo further R.I. for one month for the offence punishable under section 306;
- (iii) R.I. for three years and to pay a fine of Rs.250/-, in default to undergo further R.I. for one month for the offence punishable under section 498-A; and
- (iv) accused No.1 has further been convicted for the offence punishable under section 506 (2) and accused Nos.1 and 3 have been convicted for the offence punishable under section 506 (2) read with section 114 and each of them has been sentenced to suffer R.I. for one month and to pay a fine of Rs.250/-, in default to undergo further R.I. for one month.

No separate sentence has been imposed on the accused for the offences punishable under sections 4 and 5 of the Dowry Prohibition Act, 1961 and all the sentences have been ordered to run concurrently.

2. The prosecution case can be briefly summarised as

under: The marriage between the deceased and accused No.1 took place 14 months before the date of the incident. As can be seen from the charge, the prosecution alleged that the deceased was being subjected to cruelty and harassment by the accused and, therefore, the deceased Vina committed suicide by burning herself after sprinkling kerosene at about 9.30 a.m. at village Sukhpar of Bhuj taluka on 12-4-92. The accused were, therefore, chargesheeted for committing the offences punishable under sections 304-B, 306, 498-A and 506 read with section 114 of the Indian Penal Code. They were also charged for offences punishable under sections 4 and 5 of the Dowry Prohibition Act, 1961. The accused pleaded not guilty to the charges levelled against them and, on their coming to be tried, at the end of the trial, the learned Additional Sessions Judge, Kutch at Bhuj, by his impugned judgment and order dated 27-4-94 rendered in Sessions Case No. 65/92, convicted all the accused and sentenced each of them as stated in para 1 of this judgment. It is this judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Kutch at Bhuj which has been challenged by the appellants by way of these two appeals.

3. Mr. Y.S. Lakhani, learned Advocate, appearing for the appellant-accused has taken us to the evidence of the material prosecution witnesses and submitted that the learned trial Judge has committed an error in convicting the accused. In his submission, except the evidence of interested witnesses, there is no other independent evidence worth the name adduced by the prosecution warranting the conviction of the accused. Mr. Lakhani has also submitted that in view of the contradictions as well as the improvements made in the evidence of the prosecution witnesses and the story put forward by them, their evidence has become unreliable and untrustworthy and, therefore, no conviction can be based on such evidence.

4. On the other hand, Mr. S.A. Pandya, learned Additional Public Prosecutor, has supported the judgment of the learned trial Judge.

5. After having gone through the evidence on record, we feel that these two appeals are required to be allowed as, in our opinion, the accused have falsely been involved for the suicidal death of the deceased. PW 2 (Ex.14) Govind Chhaganbhai the father of deceased Vina, who is the complainant in this case, has stated that the marriage between the deceased and accused No.1 took place

on 13-2-91. The couple was staying with accused Nos.2 and 3 at Ganeshnagar in Bhuj town. Two months after the marriage when Vina came to the house of the complainant, she informed that the accused are beating her and also taunting her for not bringing any Dowry. The complainant, however, advised her not to take the things seriously. It appears that thereafter the deceased and accused No.1 shifted their residence from Ganeshnagar to Madhapar where they stayed together for about three months. It appears that when the deceased again came to her father's place, she informed her mother Bhathiben (PW 3, Ex.16) regarding harassment and beating by the accused for Dowry. The complainant has further stated that Vina was sent back to his house as she was not well and soon thereafter, accused No.1 came for taking the deceased. At this time the complainant asked accused No.1 to call his father i.e. accused No.2 to have a discussion and assurance from him for not causing any harassment to Vina. Accused No.1 thereafter left the place of the complainant and again came after two days and gave an assurance that Vina will not be harassed by the accused. It appears that thereafter Vina had gone with accused No.1. However, she returned after about eight days and she again informed the complainant that this time she was beaten by her mother-in-law accused No.3. When accused No.1 came to take Vina, the complainant refused to send her. However, at the instance of the complainant, accused No.1 and deceased Vina stayed near the house of the complainant for some time. In the mean time accused No.2 came to the place of business of the complainant and gave threat of committing his murder as he had kept his son-accused No.1 and deceased Vina with him. It appears that accused No.1 and Vina stayed near the house of the complainant for about three months and thereafter both started residing at village Sukhpar where deceased committed the suicide on 12-4-1995. According to the complainant, thereafter accused Nos.1 and 2 had come by a rickshaw and informed the complainant that Vina has committed suicide by burning herself. So the complainant and his wife PW 3 Bhathi had gone by that rickshaw with the accused Nos.1 and 2 to Sukhpar. According to the complainant, even in the rickshaw, accused No.2 had given him threat. The complainant has admitted that his statement was recorded by the police.

6. PW 3 Bhathi has more or less narrated the same story. However, on a close scrutiny of her evidence, it clearly transpires that she is not a truthful witness. Even though she has stated that when Vina came to their house and narrated that she was being beaten by the accused on account of Dowry, according to

her evidence, it was accused No.1 who had come to take Vina with him and when the witness inquired from the deceased regarding her willingness to go with accused No.1, he gave assurance for good behaviour to the deceased. This witness has further stated that when the deceased again returned to her and when she inquired from her about her willingness to go to the place of her inlaws, the deceased informed that she would like to stay with accused No.1 only at Ganeshnagar. Accused No.1, in fact, obliged the deceased as well as her parents by staying with the deceased separately from his parents. Thus, reading the evidence of the complainant as well as his wife, it is clear that during 14 months of married life, the deceased and accused No.1 stayed together for a very short period and the deceased, on the contrary, most of the time had stayed either at her parental house or with accused No.1 only and, therefore, there is no sufficient material on record regarding the alleged harassment and beating by the accused on account of the Dowry. On the contrary, as stated above, accused No.1, by leaving his own parents, in fact, stayed with the deceased at Ganeshnagar for a period of three months and thereafter at Sukhpar till the deceased died. This would on the contrary go to show that there was no harassment to the deceased by the accused immediately prior to her death.

7. One more witness PW 5 Ghelabhai Virabhai has been examined by the prosecution. He is the uncle of the complainant. On reading his evidence, we are clearly of the view that his evidence is totally unreliable and, therefore, not acceptable. Even though this witness, his wife and children had not attended the marriage of the deceased and accused No.1. and had not visited the complainant, even then he has come forward with a case that the deceased Vina used to come to him and was informing him about the illtreatment and harassment caused to her by the accused. He has given so much details about the conversation between him and Vina which would go contrary to the evidence of the complainant and his wife PW 3 Bhathi. Even though he was informed about the untimely death of the deceased, he had taken his own time to reach Sukhpar and on reaching Sukhpar he had not seen the dead body of the deceased. Thus, the conduct on the part of this witness is totally unnatural. In any case, reading the entire evidence of this witness, we are of the opinion that his evidence does not inspire any confidence.

8. It is an undisputed fact that the police recorded

the statements of the complainant, PW 3 Bai Bhathi, PW 5 Hirabhai and other witnesses including the neighbours on the day of the incident. PW 6 (Ex.23) Anilkumar Pratham was at the relevant time serving as SDPO at Bhuj. He has clearly stated in his evidence that on being informed by the PSI, he had gone to the scene of offence and prepared the inquest panchnama as well as the panchnama of the scene of offence, recorded the statements of the accused as well as other witnesses. In his cross-examination he has clearly stated that in all he had recorded the statements of 9 witnesses. After recording the statements, he found that no offence was disclosed. With a view to satisfy the correctness of the said statements, we have called for the original file through the learned Additional Public Prosecutor Mr. Pandya and after having perused the said statements, we are also convinced that as per the statements recorded by the SDPO Mr. Pratham, no offence was disclosed. On the basis of the statements recorded by the SDPO, if no offence was disclosed, we feel that the prosecution ought not to have kept back this material from the accused by not supplying the same to them alongwith the chargesheet and, in any case, the defence ought to have insisted for supplying the same to the accused for the purpose of satisfying the judicial conscious for finding out the ultimate truth. In any case, the oral evidence of all the prosecution witnesses, whose statements were recorded, runs counter to their own statements. Admittedly, the complainant Govindbhai gave the complaint Ex.15 on the next day after the incident i.e. on 13-4-92 after consulting his relatives. The complaint, Ex.15, is also too general and vague inasmuch as the allegations made therein are contrary to the statement given before the SDPO. Since no details whatsoever have been given in the complaint, as stated above, the prosecution witnesses have come out with all sorts of allegations before the Court for the first time. We, therefore, feel that no reliance can be placed on such allegations. In view of this, we are of the opinion that the evidence of the prosecution witnesses is not at all reliable and, therefore, no conviction can be based on such evidence.

8. In the result, both these appeals are allowed.

The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Kutch at Bhuj in Sessions Case No.65 of 1992 is quashed and set aside and all the accused are ordered to be acquitted of the offences charged with and they be set at liberty forthwith if not required in connection with any other offence.

True copy